

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TERRY L. LANEY JR.,

Plaintiff,

v.

PRAIRIE FARMS DAIRY INC., and RICK  
DIEK, Individually and in his Official  
Capacity as Human Resources Manager for  
Prairie Farms,

Defendants.

Case No. 18-cv-1768-JPG-GCS

**MEMORANDUM AND ORDER**

This matter comes before the Court on the defendants' motion to dismiss, or, in the alternative, for a more definite statement (Doc. 12). Plaintiff Terry L. Laney Jr. did not respond in a timely manner, so on December 20, 2018, the Court ordered him to show cause why the Court should not construe his failure to timely respond as an admission of the merits of the motion (Doc. 20). The Court indicated a response to the motion to dismiss would be an adequate response to the order to show cause.

Laney has responded to the motion (Doc. 23). He indicates that he agrees to dismissal of (1) all claims against defendant Richard Diak (misnamed in the Complaint as Richard Diek) with prejudice because individuals cannot be liable under Title VII of the Civil Rights Act or the Illinois Human Rights Act ("IHRA") and (2) all claims under the IHRA (Counts IV and V) for failure to exhaust administrative remedies. He further states he is willing to file a more definite statement of his hostile environment national origin discrimination claim (Count II).

To achieve the result desired by all parties as reflected by their briefs on the pending motion, the Court:

- **GRANTS** the defendants' motion to dismiss (Doc. 12);
- **DISMISSES** all claims against defendant Rick Diak **with prejudice**;
- **DISMISSES** Counts IV and V, Laney's IHRA claims, against defendant Prairie Farms Dairy, Inc. **without prejudice** for failure to exhaust administrative remedies;
- **DISMISSES** Count II against defendant Prairie Farms Dairy, Inc. **without prejudice** and with leave to replead with additional factual allegations;
- **ORDERS** that Laney shall have up to and including February 1, 2019, to file an amended complaint. Laney is directed to consult Local Rule 15.1 regarding amended pleadings and need not seek leave of Court to file such amended pleading;
- **DISCHARGES** the order to show cause (Doc. 20); and
- **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of the case.

**IT IS SO ORDERED.**

**DATED: January 14, 2019**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**